

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TAMARA L. RIVERS,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	NO. 4:04-CV-539-A
	§	
JO ANNE B. BARNHART,	§	
COMMISSIONER OF SOCIAL	§	
SECURITY ADMINISTRATION,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION
and
ORDER

Came on for consideration the above-captioned action wherein Tamara L. Rivers is plaintiff and the Commissioner of Social Security, currently Jo Anne B. Barnhart, is defendant. On August 9, 2005, the United States Magistrate Judge issued his proposed findings, conclusions, and recommendation,¹ and granted the parties until August 30, 2005, in which to file and serve any written objections thereto. By order signed August 26, 2005, the court gave plaintiff an extension to September 29, 2005, for the filing of her objections. On September 29, 2005, plaintiff filed her objections, and on October 28, 2005, defendant responded to the objections.

¹ Citations to the proposed findings, conclusions, and recommendation issued by the United States Magistrate Judge will be "FC&R."

I.

Standards of Review

Pursuant to 42 U.S.C. § 405(g), the only issues before the court are whether the final decision of the Commissioner that plaintiff is not disabled within the meaning of the Social Security Act is supported by substantial evidence, and whether the decision complies with applicable legal standards. Crouchet v. Sullivan, 885 F.2d 202, 204 (5th Cir. 1989). If supported by substantial evidence, the Commissioner's findings are conclusive and must be affirmed. Richardson v. Perales, 402 U.S. 389, 390 (1971). The court may not reweigh the evidence or substitute its opinion for that of the Commissioner, but must scrutinize the record in its entirety to ascertain whether substantial evidence exists to support the Commissioner's findings. Fraga v. Bowen, 810 F.2d 1296, 1302 (5th Cir. 1987). Substantial evidence is more than a mere scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Crouchet, 885 F.2d at 204. In determining whether the Commissioner's decision is supported by substantial evidence, the court considers (1) objective medical facts and clinical findings, (2) diagnosis of examining physicians, (3) subjective evidence of pain and disability as testified to by the claimant, and (4) the claimant's age, education, and work history. Smith v. Schweiker, 646 F.2d 1075, 1077 (5th Cir. Unit A June 1981). "[N]o substantial evidence" will be found only where there is a "conspicuous absence of

credible choices" or "no contrary medical evidence." Johnson v. Bowen, 864 F.2d 340, 343-44 (5th Cir. 1988) (citing Hames v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983)).

Once the magistrate judge has issued his proposed findings, conclusions, and recommendations, and the plaintiff has made objections thereto, the district judge makes a de novo determination of those portions of the magistrate judge's specified proposed findings or recommendations to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court now makes that determination in the context of the basic principles mentioned above.

II.

Plaintiff's Objection and Ruling Thereon

Plaintiff made only one objection to the FC&R. She objects that:

The [administrative law judge's] finding that [plaintiff] can perform her past relevant work as a receptionist is inconsistent with his mental residual functional capacity finding that [plaintiff] is "limited to tasks requiring contact with people only incidental to work performed" and, thereby, is unsupported by substantial evidence.

Pl.'s Objections at 1.

The argument urged by plaintiff in support of her objection is predicated entirely on imaginative use of dictionary definitions of the word "incidental" to create what plaintiff perceives to be a technical inconsistency between the assessment of the administrative law judge ("ALJ") of plaintiff's mental residual functional capacity ("RFC") and his finding as to the

mental demands of plaintiff's past work as a receptionist. The ALJ's assessment of plaintiff's mental RFC was as follows:

At all times relevant to this decision, the claimant . . . had the following non-exertional limitations: she is limited to non-complex tasks in a routine setting and she is limited to tasks requiring contact with people only incidental to work performed.

Tr. at 17, ¶ 6. His finding as to the mental demands of plaintiff's past relevant work as a receptionist was as follows:

Contact with the public is only incidental to the client base in the office where the work is performed.

Id. at 16.

After having made a close study of the assessments and findings of the ALJ, the court has concluded that the inconsistency perceived by plaintiff is nonexistent. The ALJ quite consistently concluded that plaintiff's mental RFC included the ability to appropriately interact with people with whom she would be in contact incidental to her work as a receptionist. The ALJ properly matched up the people-contact mental RFC of plaintiff with the people-contact demands of plaintiff's past relevant work as a receptionist. The court declines to accept plaintiff's distortions, based on selected dictionary definitions, of the ALJ's assessment and finding.

III.

Conclusion and Order

For the reasons stated above, the objection of plaintiff is without merit. Therefore, the court accepts the magistrate judge's proposed findings, conclusions, and recommendations. Consistent therewith,

The court ORDERS that the Commissioner's decision that plaintiff did not qualify for a period of disability and disability insurance benefits be, and is hereby, affirmed.

SIGNED January 3, 2006.

/s/ John McBryde
JOHN McBRYDE
United States District Judge